

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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WALTER POTOCZNY,

Plaintiff,

**ORDER**

CV 06-4983 (LDW) (ARL)

-against-

SAMUEL D. HUNTER, et al.,

Defendants.

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**LINDSAY, Magistrate Judge:**

By letter dated July 1, 2007, plaintiff seeks reconsideration of the undersigned's June 29, 2007 order that barred Albert Leoni and Robert Reicher from testifying at trial. Defendant Babylon Marine, Inc. opposes the application by letter dated July 6, 2007. For the reasons that follow, the court grants reconsideration and, upon such reconsideration, adheres to the June 29<sup>th</sup> order.

The parties appeared before the undersigned June 29, 2007 for the final conference in this case. During that appearance, defendants objected to the plaintiff's inclusion in the joint pre-trial order of six previously unidentified witnesses. After hearing from the parties, the court barred these witnesses from testifying given the plaintiff's failure to identify them during discovery as is required by the Federal Rules of Civil Procedure and the Local Rules of this court. Karen Wright was excluded from this preclusion order after the defendants conceded they were aware she might be a potential witness. In the instant application, plaintiff urges that since Leoni and Reicher were "mentioned" during the plaintiff's April 10<sup>th</sup> deposition they too should be permitted to testify at trial. The fact that the plaintiff may have mentioned these individuals during his deposition does not equate to a proper disclosure within the meaning of the Rules. Plaintiff did not identify these individuals in his Rule 26(a) initial disclosures, nor has he supplemented such disclosures during the course of discovery. Having failed to properly disclose the existence of these witnesses, plaintiff is precluded from introducing their testimony at trial.

To the extent that the plaintiff has not provided contact information for Karen Wright or the documents concerning the maintenance repair records concerning the subject vessel, he shall provide these items by **July 20, 2007**. Given plaintiff's failure to promptly produce these items as he represented during the June 29<sup>th</sup> conference, the plaintiff is warned that his failure to comply with this order will lead to preclusion of this evidence.

Dated: Central Islip, New York  
July 9, 2007

**SO ORDERED:**

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/s/  
ARLENE R. LINDSAY  
United States Magistrate Judge